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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

GEORGE THOMAS and LINDA THOMAS,

Case No. CV 05 1725-MO

Plaintiffs,

SECOND AMENDED COMPLAINT

v.

U.S. BANK, N.A., a foreign legal entity,

Unlawful Debt Collection Practices Act;
Fair Credit Reporting Act Unlawful;
Trade Practices Act

Defendant.

JURY TRIAL DEMAND

Plaintiffs allege that at all times material:

1.

This court has jurisdiction pursuant to 15 U.S.C. § 1681p.

2.

Plaintiffs George Thomas (hereinafter “Mr. Thomas”) and Linda Thomas (hereinafter

“Mrs. Thomas”) (collectively, “plaintiffs”) are natural persons who live in Oregon City, Oregon.

3.

Defendant U.S. Bank, N.A. (“U.S. Bank” or “defendant”) is a foreign legal entity doing business in Oregon.

4.

Mr. Thomas had a credit card account with defendant. In or about 1989, the account was closed.

5.

Defendant accessed plaintiffs’ credit file when it had no permissible purpose to do so.

6.

In 2004 and 2004, defendant reported obsolete information regarding Mr. Thomas to one or more credit reporting agencies. Defendant attempted to receive payment from plaintiffs by reporting obsolete information to one or more credit reporting agencies.

7.

In 2004 and 2004, defendant reported false information regarding Mr. Thomas to one or more credit reporting agencies, including but not limited to a false date of last activity and a Chapter 7 bankruptcy. Defendant attempted to receive payment from plaintiffs by reporting false information to one or more credit reporting agencies.

8.

In 2004 and 2005, defendant demanded payment from plaintiffs for the alleged debt, including but not limited to threatening a civil lawsuit outside the six year statute of limitations. Defendant misrepresented that plaintiffs owed an alleged debt when they did not, and were

obligated to pay the alleged debt, including attorney fees and interest. Defendant misrepresented the account to one or more credit reporting agencies in an attempt to collect the alleged debt. Defendant told plaintiffs that it would correct the false information in plaintiffs' credit report if plaintiffs paid part of the debt.

9.

In addition, defendant retained a collection agency, Capital Management Services, Inc., ("Capital") to collect the alleged debt from plaintiff. Capital acted in the course and scope of its agency on behalf of defendant.

10.

Plaintiffs disputed the false and obsolete information to the credit reporting agencies. One or more of the credit reporting agencies contacted defendant regarding plaintiffs' dispute. Defendant represented to one or more credit reporting agencies that the accounts were being reported correctly. The false and obsolete information remained on plaintiff's credit reports.

FIRST CLAIM FOR RELIEF – UNLAWFUL DEBT COLLECTION PRACTICES ACT

11.

Plaintiffs reallege paragraphs 1- 10 as if fully set forth herein.

12.

Plaintiffs are "consumers" within the meaning of ORS 646.639(1)(a).

13.

Defendant is a "debt collector" within the meaning of ORS 646.639(1)(g).

14.

This civil action involves a "debt" within the meaning of ORS 646.639(1)(e).

15.

Defendant violated the Unlawful Debt Collection Practices Act in the following ways:

- a) Attempting to or threatening to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, or threaten to take any action which the debt collector in the regular course of business does not take, in violation of ORS 646.639(2)(k);
- b) Representing that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges when such fees or charges may not legally be added to the existing debt, in violation of ORS 646.639(2)(m);
- c) Collecting or attempting to collect any interest or any other charges or fees in excess of the actual debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by law, in violation of ORS 646.639(2)(n).

16.

As a result of defendant's violations, plaintiffs suffered damages in an amount to be determined by the jury.

17.

Plaintiffs are entitled to recover punitive damages in an amount to be determined by the jury.

18.

Plaintiffs are entitled to their attorney fees, pursuant to ORS 646.641(2).

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SECOND CLAIM FOR RELIEF – FAIR CREDIT REPORTING ACT

(15 U.S.C. § 1681n)

19.

Plaintiffs reallege paragraphs 1- 10 as if fully set forth herein.

20.

Plaintiffs are “consumers” within the meaning of 15 U.S.C. § 1681a(c).

21.

Defendant is a person who furnishes information to consumer reporting agencies under 15 U.S.C. § 1681s-2.

22.

Defendant willfully failed to comply with the requirements of 15 U.S.C. § 1681s-2(b).

23.

Defendant willfully failed to comply with the requirements of 15 U.S.C. § 1681b(f).

24.

As a result of defendant’s violations, plaintiffs have suffered damages including: denial of credit, invasion of privacy, lost opportunity to receive credit, damage to their reputation, worry, distress, frustration, embarrassment, and humiliation, all to their damages in an amount to be determined by the jury.

25.

Plaintiffs are entitled to punitive damages in an amount to be determined by the jury.

26.

Plaintiffs are entitled to their attorney fees, pursuant to 15 U.S.C. § 1681n(a).

THIRD CLAIM FOR RELIEF – FAIR CREDIT REPORTING ACT

(15 U.S.C. § 1681o)

27.

Plaintiffs reallege paragraphs 1- 10 as if fully set forth herein.

28.

Defendant negligently failed to comply with the requirements of 15 U.S.C. § 1681s-2(b).

29.

Defendant negligently failed to comply with the requirements of 15 U.S.C. § 1681b(f).

30.

As a result of defendant's violations, plaintiffs have suffered damages including: denial of credit, lost opportunity to receive credit, damage to their reputation, worry, distress, frustration, invasion of privacy, embarrassment, and humiliation, all to their damages in an amount to be determined by the jury.

31.

Plaintiffs are entitled to their attorney fees, pursuant to 15 U.S.C. § 1681o(a).

FOURTH CLAIM FOR RELIEF – UNLAWFUL TRADE PRACTICE ACT

32.

Plaintiff reallege paragraphs 1- 10 as if fully set forth herein.

33.

The transaction was obtained primarily for personal, family, and/or household use.

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34.

Defendant willfully made a false or misleading representation of fact concerning the nature of the transaction or obligation incurred, in violation of ORS 646.608(1)(k).

35.

As a result of defendant's violations, plaintiffs have incurred an ascertainable loss in an amount to be determined by the jury.

36.

Plaintiffs are entitled to punitive damages in an amount to be determined by the jury.

37.

Plaintiffs are entitled to their attorney fees, pursuant to ORS 646.638(3).

PRAYER

WHEREFORE, plaintiffs pray for judgment against defendant as follows:

1. On the First Claim for Relief:

- a. Damages, and,
- b. Punitive damages, and,
- c. Attorney fees, costs and disbursements.

2. On the Second Claim for Relief:

- a. Damages, and
- b. Punitive damages, and,
- c. Attorney fees, costs and disbursements.

3. On the Third Claim for Relief:

- a. Damages, and,

b. Attorney fees, costs and disbursements.

4. On the Fourth Claim for Relief:

a. Damages, and,

b. Punitive damages, and

c. Attorney fees, costs and disbursements.

5. Trial by jury is requested.

DATED this 18th day of July, 2006.

/s/ Justin M. Baxter

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the foregoing SECOND AMENDED COMPLAINT on:

Perry Heitman
Larkins Vacura LLP
808 S.W. Third Avenue, Suite 540
Portland, Oregon 97204
Attorney for U.S. Bank N.A.

[] Via First Class Mail

[] Via Facsimile

[] Via Hand Delivery

[x] Via E-mail

DATED this 18th day of July, 2006.

/s/ Justin M. Baxter

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